DR DZUL KHAINI HJ HUSAIN & ORS v. DIRECTOR OF LANDS AND MINES OFFICE (KUALA LUMPUR) & ANOR; MASS RAPID TRANSIT CORPORATION SDN BHD (PROPOSED INTERVENER)

HIGH COURT MALAYA, KUALA LUMPUR
HANIPAH FARIKULAH J
[JUDICIAL REVIEW (APPLICATION TO INTERVENE) NO: WA-25-7-01-2016]
21 JUNE 2016

CIVIL PROCEDURE: *Intervener – Application to intervene in judicial review proceedings – Whether proposed intervener would be directly and adversely affected by outcome of judicial review – Rules of Court 2012, O. 53 r. 8*

The whole land under the Ampang Park Shopping Centre ('the AP') was compulsorily acquired for the Mass Rapid Transit project ('the MRT project'). The applicants were the registered owners of 62 stratified properties at the AP respectively seeking to challenge the decision-making process of the respondents in acquiring the AP. By way of this application, Mass Rapid Transit Corporation Sdn Bhd ('MRT') sought to intervene the judicial review proceedings pursuant to O. 53 r. 8 of the Rules of Court 2012 ('the ROC'). In support of its application, MRT contended that as the developer and asset owner of the MRT project, it would be directly and adversely affected by the outcome of the application. The applicants argued that MRT's application to intervene ought to be dismissed as, *inter alia*, MRT, (i) had no direct interest in the application; (ii) was not involved in the decision-making process and would not be able to explain or shed light on how the decision of the acquisition was made; and (iii) was not directly affected as there was an intermediate agency.

Held (allowing application):

(1) MRT was added as a respondent to the proceedings. Being appointed as the entity to undertake, develop and own the MRT project, MRT had a direct interest in any decision made on the legality of the intended compulsory acquisition of the land. MRT was also involved in the decision to acquire the parcels in the land to the extent that the said land was required for the purposes of construction the underground tunnels and station for the MRT project at Ampang Park station and as such, the exercise of powers by the respondents to acquire the parcels in the said land was made to facilitate the development of the MRT project undertaken by MRT. (paras 25 & 28-29)

Case(s) referred to:

Ambiga Sreenevasan v. Ketua Pengarah Imigresen, Malaysia & Ors [2012] 7 CLJ 170 HC ***(refd)***

Cahaya Baru Development Bhd v. Lembaga Lebuhraya Malaysia [2010] 8 CLJ 761 FC ***(refd)***

Kerajaan Negeri Selangor & Ors v. Pendaftar Pertubuhan Malaysia & Another Case [2011] 1 LNS 1638 HC ***(refd)***

Lembaga Lebuhraya Malaysia v. Cahaya Baru Development Bhd [2009] 1 LNS 675 CA ***(refd)***

Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors [2009] 6 CLJ 405 FC ***(refd)***

Menteri Besar Negeri Sembilan (Pemerbadanan) v. Pentadbir Tanah Daerah Seremban & Anor [1995] 4 CLJ 477 CA ***(refd)***

Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor [2009] 4 CLJ 57 CA ***(refd)***

United Malacca Rubber Estates Bhd v. Pentadbir Tanah Daerah Johor Bahru & Anor [1996] 1 LNS 108 HC

Legislation referred to:

Land Acquisition Act 1960, ss. 2, 3, 8, 37
Rules of Court 2012, O. 53 r. 8
Rules of the High Court 1980, O. 53 r. 8(1)

For the applicants - Yee Jun Hong, Jason Ng Kau, Ng Boon Siong, Tan Zhang Wei, Ng Yew Wei, U Wai Bing & Tan Li Yue; M/s Jason Ng & Partners
For the respondents - Nik Haizie Azlin Nabidin; SFC
For the proposed intervener - Robert Lazar & Lai Wai Fong; M/s Shearn Delamore & Co

Reported by Najib Tamby

JUDGMENT

Hanipah Farikullah J:

Introduction

[1] Enclosure (40) is the application by the proposed intervener (MRT) to intervene the judicial review proceedings pursuant to O. 53 r. 8 of the Rules of Court 2012.

[2] By the present judicial review application, the applicants are challenging the validity of the intended compulsory acquisition of the parcels in the said land under the Land Acquisition Act (LAA 1960) for the purpose of the development of MRT Line 2. The applicants are seeking declarations that the intended compulsory acquisition of the said land are unconstitutional, unlawful, illegal, null and void and an order of *certiorari* to quash the decision to compulsory acquire the said land and the notices issued under the LAA 1960.

[3] In support of its application, MRT contended that it is the developer and asset owner of the MRT project and will therefore be directly affected and adversely affected by the outcome of the application.

[4] On the contrary, the applicants submitted that the MRT's application to intervene ought to be dismissed on the following grounds:

(a) The proposed intervener has no direct interest in the application;

(b) The proposed intervener did not involve in the decision-making process and therefore will not be able to explain or shed lights on how the decision of the acquisition being made;

(c) The proposed intervener is not the person directly affected as there is an intermediate agency;

(d) The respondents will be able to answer all the issues related to this application and the presence of the proposed intervener is superfluous; and

(e) There is no necessity for the proposed intervener to intervene.

The Background Facts

[5] The 39 applicants are the registered owners of the 62 stratified properties at Ampang Park Shopping Centre ("Ampang Park"), respectively seeking to challenge the decision-making process of the respondents in acquiring Ampang Park.

[6] Pursuant to s. 8 of the Land Acquisition Act 1960 ("LAA 1960"), the second respondent had on 2 September 2015 gazetted that the whole land under the Ampang Park Shopping Centre ("the land") wil be compulsory acquired for the Project MASS Rapid Transit Jajaran Sungai Buloh-Serdang-Putrajaya ("the MRT project").

[7] The respondents have served a notice of enquiry dated 22 October 2015 under LAA 1960 in Form E to the applicants respectively, informing the applicants that there will be a land enquiry held in respect of the land acquisition of their stratified properties.

[8] Form D was issued by the first respondent and Form E was issued by the second respondent. Thereafter, the said land enquiry was conducted by the second respondent.

[9] This court has granted leave to commence the judicial review proceeding and further granted an interim stay of the land acquisition proceedings until 18 April 2016.

The MRT Project

[10] The Klang Valley Mass Rapid Transit Project (hereafter referred to as 'the MRT project') involves the construction of an urban rail network which, together with the existing light rail transit ('LRT'), monorail, KTM Komuter, KLIA Ekspres and KLIA Transit systems, will form the backbone of the public transportation system of the greater Kuala Lumpur/Klang Valley.

[11] Presently, two out of the three MRT Lines envisaged under the MRT project have been approved for implementation, including the Sungai Buloh-Serdang-Putrajaya Line, MRT Line 2. The proceedings herein relate to the proposed development of MRT Line 2.

Decision

[12] The primary contention advanced for the applicants is that the proposed intervener does not have any direct interest in the application primary on the following grounds:

(i) None of the proposed intervener's roles involves any of the following:

(a) To ensure the land is acquired;

(b) To determine the line of the MRT project; and

(c) To determine the land that need to be acquired.

(ii) The proposed intervener, as a mere contractor wearing the title of "developer" and "asset owner" of the MRT project does not make it a proper person who is directly affected by the outcome of the application.

(iii) The asset owner of the MRT Project is different from the asset owner of the land. Only those who have the ownership of the land will be directly affected by the outcome of the application.

(iv) Therefore, the applicants respectfully submit that the proposed intervener's role is merely to carry out the construction of the MRT project upon the successful acquisition of land which is being acquired by the Government.

[13] Therefore, the applicants submitted that the proposed intervener's role is merely to carry out the construction of the MRT project upon the successful acquisition of land which is being acquired by the Government.

[14] In support of its argument, learned counsel for the applicants referred me to a number of authorities (see *Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors* [2009] 6 CLJ 405; [2009] 6 MLJ 307, *Kerajaan Negeri Selangor & Ors v. Pendaftar Pertubuhan Malaysia & Another Case* [2011] 1 LNS 1638; [2012] 3 MLJ 795 and *Ambiga Sreenevasan v. Ketua Pengarah Imigresen, Malaysia & Ors* [2012] 7 CLJ 170; [2012] 1 MLJ 92).

[15] Further, to support its contention that MRT has no direct interest, the applicants contended that the proposed intervener is not the person paying compensation in this land acquisition. It is the applicants' submission that the proposed intervener could not claim an interest in the compensation in the land acquisition as it is not its obligation to pay the compensation in the event of successful land acquisition.

[16] On this issue, the applicants relied on the case of *Cahaya Baru Development Bhd v. Lembaga Lebuhraya Malaysia* [2010] 8 CLJ 761 and *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor* [2009] 4 CLJ 57.

[17] It is the applicants' case that since the proposed intervener failed to establish that the land was acquired on behalf of it nor it has to pay the compensation, it is not a person interested within the meaning of s. 2 and s. 37 of the LAA 1960. In support of the applicants' contention, learned counsel relied on the case of *Menteri Besar Negeri Sembilan (Pemerbadanan) v. Pentadbir Tanah Daerah Seremban & Anor* [1995] 4 CLJ 477.

[18] Pursuant to O. 53 r. 8 of the Rules of Court 2012, any person who desires to be heard in opposition to the judicial review application and appears to the judge to be a proper person to be heard may be hear, notwithstanding that such person has not been served with the cause papers in the matter. This rule is specifically drafted to cater for persons claiming an interest in a judicial review proceedings and who wish to be heard in opposition, such as the proposed intervener.

[19] In the case of *Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors* [2009] 6 CLJ 405, the Federal Court dealt with the question of whether Majlis Agama Islam (MAIS) could intervene as a "proper person" under O. 53 r. 8(1) of the RHC.

[20] On this issue, the Federal Court held that the use of the phrase "proper person" in O. 53 r. 8(1) of the RHC must be read as referring to "persons with direct interest". This is what the Federal Court said:

> It does not stand to reason for a party not having any direct interest to be allowed to be joined as a party, more so in the light of the nature of the jurisdiction being exercised in judicial review proceeding.

[21] It is not a disputed fact that the third respondent is a special purpose vehicle appointed by the Government of Malaysia to be the developer and asset owner of, *inter alia*, the MRT Lines.

[22] The affidavit evidence also shows that the third respondent is responsible for, *inter alia*, the management of the procurement process and the submission of all key project documents in relation to the design, construction, testing and commission of the MRT project. The third respondent is also responsible for, *inter alia*, the construction and implementation of the MRT project within the anticipated budget and time, which includes monitoring and tracking the construction of all elevated structures, stations and depots of the MRT project and supervising underground works including tunnelling and construction of underground station.

[23] In this regard, the applicants had in their affidavit in support of the judicial review proceedings herein acknowledged the role and involvement of the proposed intervener in the intended compulsory acquisition of the parcels in the said land for the purpose of the MRT project in the applicants' affidavit in support of the judicial review proceedings:

(i) At para. 75 of the applicants' affidavit in support of the judicial review proceedings (encl. 4) (p. 31), the applicants acknowledged the following:

> 75 There was a meeting held on 16.12.2015 between the Mass Rapid Transit Sdn Bhd ("MRT Corp") and the Special Committee of the Ampang Park Special Committee ("MRT Meeting")

(ii) At para. 76 of the applicants' affidavit in support of the judicial review proceedings (encl. 4) (p. 31), the applicants acknowledged the following:

> 76 During the meeting, the MRT Project Director, Dato' Amiruddin Maaris had confirmed that the MRT Project will only involve the construction beneath the surface building, which is the underground to build the MRT Underground Station and Linkway.

(iii) At para. 84 of the applicants' affidavit in support of the judicial review proceedings (encl. 4) (p. 34), the applicants sought to justify their application for stay as follows:

> 84. I am further advised by the Applicants' Solicitors in this instant case, the Applicants and MRT had convened the MRT Meeting on 16.12.2015 to resolve the land acquisition issue amicably by way of entering into a MA (Mutual Agreement). Accordingly, the Applicants content that this Honourable Court shall grant a stay of the land acquisition proceeding pending the execution of the MA as well as the outcome of this judicial review application.

[24] Based on the affidavit filed by the parties, in my view, the proposed intervener's role and involvement in the MRT project is not in dispute.

[25] I accept the submission of learned counsel for the proposed intervener that by reason of the proposed intervener being appointed as the entity to undertake, develop and own the MRT project, the proposed intervener has a direct interest in any decision made on the legality of the intended compulsory acquisition of the parcels in the said land, as such decision would directly fetter the proposed intervener's right to undertake the MRT project.

[26] In the case of *Lembaga Lebuhraya Malaysia v. Cahaya Baru Development Bhd* [2009] 1 LNS 675; [2009] 5 MLJ 14, the land in question was acquired by the State Authority for the construction of the highway project to be undertaken by the appellant. The Court of Appeal found that the appellant had undertaken a work of undoubted public utility within the meaning of 'public purpose' under s. 3 of the 1960 Act. Accordingly, the Court of Appeal held that the appellant was therefore a 'person interested' within the

meaning of s. 2 and s. 37 of the 1960 Act and was therefore entitled to lodge an objection on the compensation awarded for the compulsory acquisition of the land in question. (See also *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor* [2009] 4 CLJ 57; [2009] 3 MLJ 809 and *United Malacca Rubber Estates Bhd v. Pentadbir Tanah Daerah Johor Bahru & Anor* [1996] 1 LNS 108; [1997] 4 MLJ 1)

[27] I accept the submission for the third respondent that by analogy to the projects undertaken in the cases cited above, the MRT project is essentially a project undertaken by the proposed intervener for the development of the public transport system in Malaysia and as such, is a project undertaken for public purpose or for a purpose beneficial to the economic development of Malaysia and/or to the public generally within the meaning of s. 3 of the 1960 Act. The proposed intervener must therefore be regarded as having a direct interest in the compulsory land acquisition process under the 1960 Act.

[28] Further, the affidavit evidence shows that the proposed intervener was involved in the decision to acquire the parcels in the said land, to the extent that the said land was required for the purposes of constructing the underground tunnels and station for the MRT project at Ampang Park station and as such, the exercise of powers by the respondents to acquire the parcels in the said land was made to facilitate the development of the MRT project undertaken by the proposed intervener. It is also not disputed that the proposed intervener is the party responsible for all relevant plans and proposal for the construction of the proposed underground tunnels and station for the MRT project on the said land.

Conclusion

[29] Based on the above reasons, I gave leave for the proposed intervener to be added as a respondent to the proceedings.